

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Binatone Computers Pvt. Ltd. Vs. Setech Electronics Ltd.

Binatone Computers Pvt. Ltd. Vs. Setech Electronics Ltd.

SooperKanoon Citation : sooperkanoon.com/709172

Court : Delhi

Decided On : Aug-21-2009

Reported in : 162(2009)DLT537

Judge : Rajiv Sahai Endlaw, J.

Acts : [Companies Act, 1956](#) - Sections 531; Transfer of Property Act - Sections 53; Registration Act; Code of Civil Procedure (CPC) - Sections 95 - Order 21, Rules 58 and 59

Appeal No. : EA No. 436/2008 in Ex.P. No. 285/2008

Appellant : Binatone Computers Pvt. Ltd.

Respondent : Setech Electronics Ltd.

Advocate for Def. : Atul Jain, Adv.

Advocate for Pet/Ap. : A.K. Thakur and; Rajiv Arora, Advs

Disposition : Application allowed

Judgement :

Rajiv Sahai Endlaw, J.

1. Objections under Order 21 Rules 58 & 59 CPC have been preferred by Mrs. Kusum Lata Jalan and Mr. Prachir Jalan with respect to the attachment of property

No. E-947, Chittranjan Park, New Delhi, at the instance of the Decree Holder in Execution against M/s. Setech Electronics Limited. Ex-parte order of attachment was made by this Court on the representation of the Decree Holder that the said property was the property of the Judgment Debtor and had been attached in earlier execution petition against the Judgment Debtor also.

2. The objectors claim to be the owner of the property and have in support thereof filed before this Court photocopies of (i) the lease deed executed by the President of India with respect to the land underneath the said property in favour of Mr. Piyush Kanti Sen Gupta; (ii) the agreements to sell executed by the said Mr. Sen Gupta in favour of the objectors with respect to the said property; (iii) receipts executed by the said Mr. Sen Gupta of sale consideration with respect to the said property from the Objectors; and (iv) the order dated 10th October, 2001 of the MCD allowing mutation of the said property in the name of the objectors. The counsel for the objectors has today in court, as directed earlier given inspection of the originals of the said documents to the counsel for the Decree Holder.

3. The Decree Holder has opposed the objections and has contended that the said property was the address of the registered office of the Judgment Debtor company and it is further contended that the objectors are in collusion with the Judgment Debtor.

4. It may be noticed that the counsel for the Objectors also admits that Objectors are the son and the wife of the brother of Mr. Kishan Kumar Jalan, one of the Directors of the Judgment Debtor company.

5. The counsel for the Decree Holder first contended that an official of the Judgment Debtor had in an earlier proceedings admitted the said property to be of the Judgment Debtor. Attention in this regard is invited to order dated 14th December, 2007 in execution No. 143/2007. However all that is contained in the said order is that till the next date in those proceedings the said property is attached. Though the presence of the counsel appearing today on behalf of the Decree Holder as well as of Mr. Kushal Chaturvedi, representative of the Judgment Debtor is recorded but there is no statement recorded therein of the said Mr. Kushal Chaturvedi to the effect that the property belongs to the Judgment

Debtor. The counsel for the Decree Holder however contends that such a statement was made by Mr. Chaturvedi before the court on that date. It is so stated in the reply of the Decree Holder to the objections also. However the said reply is not accompanied by the affidavit of any person on behalf of the Decree Holder present before the court on that date. In the absence of anything in the order recording that such statement was made before the court, no notice of the same can be taken.

6. As far as the plea of the Decree Holder of the said property being shown as the registered office of the Judgment Debtor company is concerned, the same in my opinion does not form a ground for the Decree Holder to attach the said property or to insist upon continuing the said attachment. Merely because the registered office of the Judgment Debtor company existed at the address of the said property does not lead to any inference that the Judgment Debtor company has any interest in the said property which could be attached in execution of a money decree against the Judgment Debtor company.

7. The counsel for Decree Holder has insisted that since collusion has been pleaded by the Decree Holder in its reply to the objections, the procedure for disposal of the objection should be of framing of issues and putting the matter to trial. It has been inquired from the counsel for the Decree Holder as to what is the impact, even if any of the collusion as alleged between the objector and the Decree Holder is established. No purpose will be served in putting the matter to trial and continuing with the attachment as sought by the Decree Holder, if even in the event of collusion being established there is no effect thereof.

8. In this regard it may be stated that attachment of a property acts as a clog on the property and interferes in the owner exercising lawful rights with respect thereto and thereby causes loss/damage to the objector. Thus wrongful attachment causes loss to the real owner of the property. This is so recognized in Section 95 CPC also, providing for compensation for obtaining attachment on insufficient grounds.

9. The objections can be put to trial not merely because law so provides, but only when questions requiring trial are made out and determination whereof is

necessary for determination of matter in controversy. Though the arguments of collusion between Judgment Debtor and Objectors, who admittedly are closely related, appear attractive and equitable since the Decree Holder in spite of decree in its favour is still without its fruits, but I have wondered, so what? Unless it can be said that if it is established that the Objectors are in collusion with the Judgment Debtor, the decree against the Judgment Debtor can be executed against the property of the Objectors, no purpose will be served in putting the pleas of collusion to trial. Question has been put to the counsel for Decree Holder in this regard. No law/legal provision has been cited in this regard.

10. To my mind with respect to a company, the only provisions in this regard are contained in Section 531 of the [Companies Act, 1956](#) and Section 53 of the Transfer of Property Act. With respect to a company ordered to be wound up, the fraudulent transfers including of immovable property are invalid; but Judgment Debtor is not being wound up; so the same is not applicable under Section 531 of Companies Act; Section 53 of the Transfer of Property Act entitles a creditor to institute a suit to avoid a transfer on the ground that the same has been made with intent to defeat or delay the creditors of the transferor; such suit is to be instituted on behalf of or for the benefit of all the creditors; this is neither a suit nor is the Decree Holder representing all creditors of the Judgment Debtor. So Section 53 of the Transfer of Property Act is also not applicable.

11. In fact in the present case nothing has been shown that the aforesaid property at any stage belonged to the Judgment Debtor for it to be fraudulently transferred to the objectors.

12. Thus, even if there is collusion between the Judgment Debtor and the Objectors, no case of executing the decree against the Judgment Debtor from property of the Objectors is made out. The Judgment Debtor, is a legal entity separate and distinct from its shareholders and Directors and the decree against/debts, of a company are not realizable from its shareholders/Directors or their family members. Of course the corporate veil can be pierced upon conditions thereof as laid down in *Singer India Ltd. v. Chander Mohan Chadha* : AIR 2004 SC 4368 being made out. However there is not a whisper in this regard, neither in the

execution petition, nor in the reply to the objections. On the contrary ex-parte order of attachment was obtained by representing the property to be of Judgment Debtor. Without a case for piercing corporate veil being pleaded, no roving trial can be ordered.

13. The counsel for the Decree Holder has next contended that the agreements to sell of the property in favour of the objectors are un- registered. The said agreements are of the year 1991. The counsel for the objectors has contended that the Judgment Debtor company came to be incorporated thereafter in the year 1993. Even otherwise prior to the amendment of the Registration Act with effect from September, 2001 qua Delhi, such agreements to sell of immovable property whereunder entire consideration was paid and possession delivered in part performance were not required to be registered. The Division Bench of this Court has in *Asha M. Jain v. The Canara Bank* : 94 (2001) DLT 841 held that judicial notice had to be taken by the courts of such transactions being prevalent in Delhi and attachment of property, transacted under such agreements to sell, was set aside. In this case the agreement to sell is not by Judgment Debtor in favour of Objectors; even if the agreements to sell was to be held to be invalid for not being registered, the property would still fall upon the ownership of Mr. Sen Gupta aforesaid. The counsel for Decree Holder however contends that in that case Mr. Sen Gupta should have filed objections before this Court and the attachment should be continued for this reason.

14. Attachment of property can continue only if it belongs to the Judgment Debtor. Once it is not shown that the property belongs to the Judgment Debtor, attachment cannot be continued, even if the property belongs to a person other than the objectors.

15. Thus no case is made out for framing the issues and continuing the attachment as contended by the counsel for the plaintiff.

16. Before parting with this case it may be noticed that on query from the counsel for the Decree Holder as to what steps were taken by the Decree Holder before contending before this Court for obtaining an ex-parte order of attachment that the property belongs to the Judgment Debtor, it is stated that the Decree Holder itself

being a company, no inquiries could be made. A company cannot escape responsibility for its actions by contending to be a juristic person. It thinks and acts through its board of directors. When a person, be it a company, approaches the court for an ex-parte order and on whose statement the courts acts, it is expected to be fair to the court and to the party against whom order is sought. In the present case it appears that the Decree Holder has not made any enquiry from the L&DO; or the MCD where the records of this property exist before averring that the property of which attachment was sought belonged to the Judgment Debtor. Such practice of obtaining attachments of properties of persons other than Judgment Debtors, without making any enquiry as to title ought to be deprecated.

17. I also find that not only did the Decree Holder not make any enquiry, in the case, but as would be obvious from above, even after being appraised of the title of the Objectors qua the said property, persisted in continuing the attachment and argued for the objections to be put to trial. The reason therefor is obvious. The Decree Holder thereby wants to coerce the Objectors who are related to the Judgment Debtor/its Directors. This Court ought not to be made privy to such practices.

18. It is incumbent on a person seeking attachment of any property to state on oath that the Judgment Debtor has attachable interest therein. If found otherwise, such person is liable to the person whose property has been so attached, for wrongful attachment Section 95 CPC is only qua defendant in a suit. No provision is found qua a non party to the suit. However, once it is found that wrongful attachment is actionable, such person cannot be remediless. In my view, such remedy ought not to be left to be by way of a separate proceeding. An injury caused by litigation ought not to be left to be redressed in a separate litigation and in so far as possible, amends should be made in the same litigation. Unless it is so done, litigants would not hesitate in causing such injury to other, secure in the belief that the other is unlikely to commence another litigation for such redressal. Courts are meant for adjudication of bonafide conflicts and not for causing injury to the other by merely involving in litigation.

19. The privy council as far back as in *Kissori Mohan Roy v. Harsukhdas* ILR 17 Cal 436 held that no finding of malice or want of reasonable care is necessary in case where the property of a person who is not a party to the suit is wrongfully attached. The same view is taken in *Bank of India v. Lakshimani Dass* : (2000) 3 SCC 640. Having found that the Decree Holder in the present case to have wrongfully obtained attachment of the property of the Objectors and persisted in the same, the Decree Holder has become liable.

20. The application/objections are allowed. Attachment earlier ordered is vacated. For above purposes, Col. J.S. Pental who has signed and verified the execution and filed the affidavit in support of the execution is directed to remain personally present before this Court on the next date of hearing.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com